HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.3190 of 2006 (O&M)
Date of decision : 19.02.2007

Dakshin Haryana Bijli Vitran Nigam .....Appellant

versus

Anoop Kumar Gupta and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Naresh Katyal, Advocate for the appellant.

* * *

ORDER

HEMANT GUPTA, J.

C.M.No.7757-C of 2006

For the reasons mentioned in the application, the delay of 162 days in filing the appeal is condoned subject to all just exceptions.

R.S.A.No.3190 of 2006.

The defendant in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for declaration filed by the plaintiff that a sum of Rs.1,02,046/- demanded vide Bill dated 7.5.2000 in the name of Subhash Makhija cannot be recovered from the present plaintiff, was decreed.

It has been found that the plaintiff has purchased the property in dispute vide registered sale deed dated 10.1.2000, whereas the demand raised pertains to the period from December, 1996 to May, 2000. The plaintiff has got the new electric connection in August, 2000. It was found that the recovery is sought to be raised on the basis of an affidavit Exhibit DW-1/D. The said affidavit is not proved, nor the same was pleaded in the

written statement. The plaintiff has not confronted the said affidavit nor the said affidavit was proved by any known methods of proof of admission. Still further it has been found that the Sales Circular dated 27.11.2001 is not applicable in respect of the electric connection obtained earlier.

The sole argument raised by learned counsel for the appellant is that the affidavit has been tendered into evidence by the defendant and, therefore, the plaintiff is liable to satisfy the demand raised against the purchaser of the premises. However, the said argument is not tenable in as much as the defendant has not pleaded the said affidavit in the written statement nor proved such affidavit in evidence.

In view thereof, I do not find any illegality or irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

February 19, 2007
**mohinder*